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POLITICAL SCIENCE QUARTERLY

SOVEREIGNTY AND GOVERNMENT

EDMUND BURKE'S observation that "it is very rare indeed for men to be wrong in their feelings concerning public misconduct; as rare to be right in their speculation upon the cause of it," applies to the operations of the human mind upon many subjects. As products of evolution, feelings are older than thoughts; they represent ages of adjustment of the human organism to its environment; they are closely related to instincts. Yet it would not be safe to say that, while the speculations of the multitude upon the causes of things in general are more or less fantastic, the feelings of the multitude may always be accepted as right and trusted for guidance. No writer more vividly than Burke himself, in his *Reflections on the French Revolution* and elsewhere, has shown us how darkly evil the feeling of the multitude may be when, in moments of frenzy, the populace gives itself over to acts of mad destruction or of savage cruelty.

Accepting, then, the general truth that, with some startling exceptions, the feelings of mankind are sounder than its speculations, we are confronted with the complicating fact that theories play a large part in arousing and sustaining feeling. There has never been a popular revolution in which abstract theories of government have not been invoked to inflame the multitude. Theories of popular sovereignty played this part in the French Revolution; theories of the essential sacredness of the individual personality played a like part in the anti-slavery struggle in the United States. How, then, can we say that feelings are more

likely than theories to be right, when feelings and theories are so intimately blended?

The true answer to this question is, I think, that theories are of two radically different kinds, which we must be careful to distinguish when we attempt to study the concerted activities of interacting minds. The theories that inflame passion or awaken conscience are not the scientific or the pseudo-scientific explanations of causation that interest the intellect; rather are they certain assumptions regarding ends to be attained, or, more abstractly, regarding the relative values of the things that men hold dear. At the opposite pole of thought from speculation upon the causes of things, they are theories not of what has been, what is, and what inevitably must be, but of what ought to be. They are formulas not of knowledge or of error, but rather of conviction; and this amounts to saying that they are products of feeling rather than of thinking. They arouse feeling, because they themselves are compressed expressions of feeling and have a correspondingly high explosive power.

The power and the fate of the great religions of the world unmistakably reveal the fundamental difference between theories of what was and is, on the one hand, and theories of what should be, on the other hand, in their respective relations to human feeling and to conduct. The speculative theories of causation embodied in religious systems have fallen into discredit; but the convictions of human need, of the supremely desirable ends of life, of what ought to be, that religious systems have fostered and transmitted, have been and in the main are still vitally true. The intellectual product has been childish; the tremendous mass of feeling has been on the whole a true adjustment of conscience and will to an all-shaping environment. The grotesque totemism of savagery, as a theory of causation, could not survive the infancy of the human mind; but the conviction that the totem kin ought to live on terms of mutual aid with some chosen species in the plant or animal world preserved food and medicinal supplies from wanton destruction, stimulated human imitation of wild creatures, and in countless useful ways enabled the primitive man himself to survive. The theology developed in connection with monotheism, as an explanation of the origin

and order of the universe, has encountered destructive criticism in a scientific age; but the conviction that men whose common lot demands a comprehensive organization should not persist in worshipping hostile gods at miscellaneous altars is as well grounded to-day as it was when warring tribes first pooled their interests in the creation of political states.

Next to theories of religious obligation, theories of the rightful forms of government and of the rightful scope of governmental power have most profoundly affected human feeling. They have pacified stolid millions to uncomplaining obedience, as in the czar-worshipping Russias of yesterday. They have struck the spark of rebellion that has dethroned kings and disintegrated empires. To the extent that these theories are formulas of feeling rather than of speculation, there is a certain presumption that they are true products and expressions of some great collective need—that they reveal obstinate conditions of existence, to which the social scheme and the common conduct of men must somehow be accommodated.

Some of the more important theories of government, however, that have been held in modern times and are still vital factors of continuing political evolution, are highly complex products of both popular feeling and expert speculation. They have been thrown into their accepted form by intellects of philosophical grasp and power, whose conceptions of causation have certainly not been wholly untrue. Scrutinized by the logician, they have been found to be masterpieces of reasoning. Granting their premises, we have been unable to reject their conclusion, that human government may rightly do this or may not rightly do that. But when attacked as merely *a priori* systems, they have fared not so well. The origins of state and government which political philosophers have formulated have been derived by them from an examination of the nature of the state or from an analysis of political forces. The historical origins of actual states and governments seem to have been very different; so different that the philosophical hypotheses appear to be almost unrelated to reality.

The sufficiency and the finality of this *a posteriori* criticism, I now venture to question. I think that it has been too literal

and too narrow, and that it has missed the points of real importance. What it is really worth while to know, I suspect, is whether the theories in question represent irresistible forces and express them with substantial truth. If they do, it matters little whether these forces have or have not created states and established governments in this or that peculiar way. Have the conclusions respecting the rightful authority of governments been in truth not only logical deductions from assumed premises, but also expressions of prevalent popular feeling? Has the popular feeling corresponded to some prevailing condition of social existence, and therefore to some compelling necessity for a given form of collective conduct? Do this moral necessity and the underlying conditions of existence from which it springs correspond substantially, if not narrowly and literally, to the conceptions of the nature and origin of the state from which the propositions touching the authority of government have been deduced? If these questions must be answered affirmatively, are not the great political theories substantially verified by *a posteriori* criticism, and have we not a scientific basis from which to forecast the probable future evolution of human government?

For the purpose of this inquiry, I propose to examine the fact as well as the conceptions of sovereignty; the actual forms and powers of government as well as the theories of their legitimate range and activity.

If with the aid of such a product of critical scholarship as Professor Dunning's illuminating volumes,¹ one traces the conception of sovereignty through its curious wanderings from the *Politics* of Aristotle to the *De corpore politico* and the *Leviathan* of Hobbes, and thence down through the analytical jurisprudence of Austin to the lectures of Sir Henry Sumner Maine, he cannot fail to see that the so-called "Austinian" definition,²

¹ Dunning, *Political Theories, Ancient and Mediæval* (1902); *Political Theories, from Luther to Montesquieu* (1905).

² The definition is in fact not Austin's; it is one which Maine attributes to Austin. Cf. Austin, *The Province of Jurisprudence Determined*, lecture vi, and Maine, *Lectures on the Early History of Institutions*, lecture xii.

which has become the cornerstone of modern political science, is modern not only chronologically but also qualitatively and structurally. For example, nothing so arrests the attention of a reader fresh from the pages of Burgess, of Dicey, of Sumner Maine or of Austin himself, on going back to the writings of Hobbes, as the emphasis that Hobbes lays upon supreme right, in distinction from supreme power, as the essential attribute of sovereignty.

In the modern mind the initial political thought is that somewhere, in every state, there resides a power that can and does compel the obedience of every subject.

There is in every independent political community—that is, in every political community not in the habit of obedience to a superior above itself—some single person or some combination of persons which has the power of compelling the other members of the community to do exactly as it pleases. This single person or group—this individual or this collegiate sovereign (to employ Austin's phrase)—may be found in every independent political community as certainly as the center of gravity in a mass of matter.¹

And Professor Burgess, answering the question, "What now do we mean by this all-important term and principle, the sovereignty?" says: "I understand by it original, absolute, unlimited, universal power over the individual subject and over all associations of subjects."²

Consistently with this assumption the modern mind accepts the distinction, first clearly made by Bodin,³ between the state and the government—a distinction which in the last analysis means that sovereign and government are neither necessarily nor always one and the same. Governments may and do fail to enforce their commands; nay, may themselves be overthrown. The sovereign, however, we are assured, is not condemned when governments are defied. In reality it is the sovereign that acts; for what the sovereign permits, the sov-

¹ Maine, *loc cit.* p. 349.

² Burgess, *Political Science and Comparative Constitutional Law*, vol. i, p. 52.

³ Dunning, *Political Theories, from Luther to Montesquieu*, p. 103.

oreign commands, and governments are but creatures and agents of the sovereign will.

In the radically different thought of Hobbes, sovereignty is not primarily a power to compel obedience; it is rather an unquestionable right to compel, if it can, and Hobbes does not pretend that it always can. Talk as he may about sovereignty holding its subjects "in awe," he is barred, by his initial hypothesis that through a social covenant sovereignty *is instituted*, from claiming that it is or can be an irresistible power. If instituted, it is a created thing. The natural man gave and the natural man may take away. On this point Hobbes has no illusions, notwithstanding his contention that in the social covenant men make absolute surrender of their natural rights and therefore of their wills; for his theory of revolution amounts to an admission that, while subjects have no right to resume either their natural rights or their natural wills, they may *de facto* resume their natural wills and, by resolving society back into a state of nature, get back *de facto* their natural rights. If, then, we hold with modern writers that sovereignty is supreme power and supreme power is sovereignty, while a supreme right—instituted or conferred by sovereignty—to exercise power is merely government, it would seem that Hobbes's conception of sovereignty is in truth a conception rather of government. At any rate, we may at least claim that the conception of Hobbes leads as inevitably to the identification of government with sovereignty as the "Austinian" conception to the distinction between state and government.

If now we follow the concept farther and farther back, to Bodin, to Dante, to Aristotle, we find that it becomes less and less "Austinian." For one thing, it becomes more concrete. Bodin, it is true, discourses of sovereignty as an abstraction, since he recognizes that it is a certain bundle of attributes and powers; but the sovereignty that he habitually thinks of is, nevertheless, embodied in a sovereign, that is to say, a king. For Dante, sovereignty and monarchy are one and the same. He not only identifies sovereignty with government, he also very nearly identifies both government and sovereignty with the state; his conception on this point seeming often to be almost

the exact opposite of that which modern writers hold. The state is the empire in opposition to the church, and the legitimate emperor in the Roman succession is the sovereign. Aristotle, familiar with every form of the state and of government, does not thus identify sovereignty only and always with an individual, but he does identify it with some very concrete parcel of humanity; with a king or a tyrant, with an aristocratic class or oligarchy, or with an Athenian demos—one of the most concrete things that ever has existed.

Not one of these writers possessed Hobbes's sharply defined conception of sovereignty as supreme and absolute right; not one of them had the clean-cut Austinian conception of sovereignty as irresistible power. Rather did they all think of it more or less crudely and hazily, as supreme but not necessarily resistless power, as supreme but not necessarily absolute right, as supreme but not always unquestionable authority.

Let us pass now from these conceptions of sovereignty to the social fact of sovereignty; and let us ask whether we are justified in assuming that the fact has at all times been one and the same fact, or whether sovereignty itself may have been a variable, an evolutionary phenomenon, created by and in turn creating varying moods of human feeling, varying attitudes of will, and consequently varying conceptions and speculations. This is a question which, I suspect, the student of political science as such or the jurist as such may be unable to answer. It is, I venture to think, a sociological question; and I believe that the answer to it, if found at all, must be found through ways of looking at social facts and processes that are acquired only through some sociological training.

Putting aside for the moment, then, all carefully phrased definitions and finely analytical distinctions, let us see whether, as a matter of fact, there really is somewhere in every commonwealth a finite power, personal or social, that either does or can compel the obedience of practically all members of the community. I am aware that this question assails fundamental assumptions, which have been thought to be as solid as the everlasting hills. But now and then in the progress of science such questions have to be asked, and the consequences sometimes

are curious. Who thirty years ago would have dreamed that physicists would so soon question the indivisibility of the primordial atom? Yet here we are to-day in a new world of physical conceptions, from which the indivisibility and everlastingness of the atom have forever been banished. When the old conceptions were subjected to a really radical scrutiny, under the light of really fundamental facts, they crumbled. Are our assumptions on the subject of sovereignty, the assumptions of political science, certainly more substantial?

As might have been expected, it was the consideration of very obvious and commonplace facts that shattered the atom into ions and corpuscles. And facts that daily stare us in the face awaken our scepticism about sovereignty of the "Austinian" description. Is there any power in any commonwealth that really does compel the obedience of everybody, or even of every particular individual whom it sets out to coerce? Does any one seriously believe that there is such a power?¹ In every-day life a political subject who cannot successfully defy or elude any known sovereign, Christian or pagan, oriental or occidental, during some part of his waking hours, and in some of his affairs, lacks executive ability. He will never be a satrap or an alderman, certainly not a "magnate" or a "boss." Of course the political philosopher admits this, but he tries to save his assumptions by assuring us that no one man could persistently defy the sovereign authority of the state, if the sovereign really set about the business of bringing him to book, or that, if he could, the rebel himself would be the sovereign.

Being now in a sceptical frame of mind, let us be sceptical to the end. Who or what is this sovereign that can, if he or it will, compel an unwilling obedience? Is it an individual, a

¹ Austin certainly did not so believe. His own words, in the *Province of Jurisprudence Determined*, lecture vi, are: "In order that a given society may form a society political, habitual obedience must be rendered by the *generality or bulk* of its members to a determinate and common superior. In other words, habitual obedience must be rendered by the *generality or bulk* of its members to one and the same determinate person or determinate body of persons." Austin here follows the perfectly reasonable thought of Bentham, *A Fragment on Government*, chapter i, section xii, and the passage is irreconcilable with the definition that Maine offers as "Austinian."

king? Has history told us of any king who, alone and unaided, ever compelled or could have compelled the obedience of five per cent of his worshipful subjects? Is the sovereign then the king plus someone else, the king and his liegeman; or, in a republic, is the sovereign some definite or indefinite number of individuals acting together? Undoubtedly every political philosopher who has conceived of sovereignty as a power to compel obedience has consciously or unconsciously thought of it as a collective power.

Obviously a group of individuals, if their number is large enough, can, if they will and as long as they will, compel any one individual to obey them. But observe that we are here talking not of an indivisible phenomenon, that is to say of power, but of a complex of phenomena; that is to say of power resulting from a certain correlation of forces and conditions. If certain individuals will the same thing and act together, and if they are sufficiently numerous, they undoubtedly constitute a power that can compel obedience. Here, at last, we get back to our fundamental question: Do we find, in every state and at all times so perfect and so continuous a concert of so many individual wills that at every instant it can, whether or not it does, compel the obedience of all or of most of the members of the commonwealth? This is what sovereignty in the "Austinian" sense signifies when we translate the abstract into the concrete. So interpreted, is sovereignty in the "Austinian" sense a fact? I have to record my perplexities and doubts. I am not prepared to deny that in certain communities and at certain times certain groups of men attain a sufficient degree of mental and volitional solidarity to compel not only particular individuals, and not only great numbers of individuals, but practically entire commonwealths, to submit and obey for a while. But I suspect that the phenomenon is comparatively rare and decidedly intermittent. In short, I suspect that sovereignty, as the actual power to compel obedience, is one of the comparatively rare, as it is certainly one of the highly complex, phenomena of human society.

If after weighing these objections we cannot longer think of sovereignty as a power to compel obedience save as an occa-

sional phenomenon, how shall we think of it? Or, to put the case a little differently, what practically universal social phenomenon is it that has compelled the political philosopher to form some conception or at least to construct some definition of sovereignty? One thing seems plain. In every state we do find a superior or a supreme power, individual or collective, which, as a general thing, is respected and obeyed. The only allegations that we have questioned are that this power is always absolute, that it always secures obedience, and that it can always compel.

Obviously the question that we now should ask is: What other ways of getting obedience are there besides the way of compulsion? And if we find that there are other ways, we should ask if each is correlated with some historical form that sovereignty assumes.

The earliest and probably to this day the most popular conception of sovereignty identifies it with a personal sovereign—a monarch or a dictator. We have seen that no mere individual can to any great extent compel the obedience of his fellows. Yet one of the most familiar facts in human society is the actual obedience of the inferior many to the superior few. From the ringleader of the school-boy crowd or of the street gang to a Julius Caesar or a Napoleon Bonaparte, we find every gradation of personal supremacy recognized and acknowledged in various acts of subordination and obedience, ranging from a mere following to loyalty, and rising at times to an almost idolatrous devotion. The power that calls forth obedience is not necessarily the prowess of the bully. Now and then physical strength has been an important factor in personal supremacy. It was conspicuously so in William of Normandy; but Caesar and Napoleon are understood to have been of inferior rather than superior physical parts. It is hardly necessary to linger on this point, because the consensus of human observation is clear. In a vast majority of instances the leader and ruler who is generally obeyed dominates through that gift which psychologists call the power of impression—a mental and moral power, the power of mere mind to awe and to fascinate, at times to inspire fear.

Not quite so familiar a fact as personal supremacy, but a

commonplace of history none the less, is the supremacy of a superior class. If individual supremacy may be called personal sovereignty, the supremacy of many superiors collectively, constituting an aristocracy or an oligarchy, may be called class sovereignty. As a fact of history such supremacy has commonly originated in conquest. The inferior social classes have at the beginning been the subjugated inhabitants of a conquered land, whose lives have been spared by their conquerors. But the day comes when they render an obedience that is not primarily enforced by physical means. It may be a homage rendered to authority—a form of power that is essentially mental and moral, backed up by tradition and sanctioned by religion; a power appealing to the sentiment and sometimes to the conscience of the obedient. Or, obedience may be exacted by economic superiority, the ruling oligarchy being rich and the subservient people being poor; the exaction nevertheless falling well short of compulsion.

At times, however, as we have admitted, there appears in human populations the phenomenon of a collective power which, for the time being and until the power itself disintegrates, is physically irresistible. The elementary form and primitive example of it is the mob-crowd bent on vengeance, on lynching or devastation. Throughout history there have been occasions when the masses of the people, aroused to opposition and compacted by revolutionary madness, have become a force that no individual, class or group could withstand. In the most literal and brutal sense, it has compelled obedience to its will. In modern democracies mere numerical majorities are in like manner irresistible, even in days of domestic peace, so long as they maintain the psychological solidarity of a crowd, because resistance instantly converts them into a demoniac physical power. This resistless social will-power of the psychologically unified crowd or majority may appropriately be called mass sovereignty.

Finally, in a highly intelligent population, where reason on the whole controls sentiment, there are evolved a collective opinion to which individuals in general defer and a collective will which individuals in general respect and obey. Every

member of the community, from the humblest to the highest, may contribute through discussion some element of thought to the common judgment, and through voluntary conduct some element of moral power to the general determination. The general will so evolved might command, exact or compel a vast deal of individual obedience, but actually it does something different and higher. It evokes obedience. Individuals in general submit to it, not as being compelled but voluntarily, because they feel that such is the right and the normal thing to do. Appealing to reason, to conscience and to common sense, the general will calls forth a cheerful and a reasonable service. This tremendous power of the general and deliberate will is a general sovereignty, in the sense that it is not the power of any mere mass, of any one class or of any one person.

What now have we discovered? Briefly this. Of four possible and familiar modes of that superior power which in political society actually secures the obedience of most men most of the time, one only is a power to compel obedience, and that one is a power that is conditional upon an obsession of the multitude. Personal sovereignty, the oldest and on the whole the commonest form, is not a power to compel, it is rather a power to command obedience. Class sovereignty, appealing through religion and tradition to human sentiment, or relying on superior wealth, is a power to inspire or to exact obedience. Mass sovereignty, the sovereignty of the overwrought and emotionally solidified multitude, is for the time being a true power to compel obedience, since, while it lasts and as far as it can reach, it is irresistible. And finally, the general sovereignty of an enlightened people that arrives at concerted volition through reason and discussion is a power, through its appeal to intelligence, to call forth, that is to say, to evoke obedience.

These four modes of sovereignty are not indifferently distributed among the peoples of the earth. One does not spring up in any given commonwealth irrespective of the social psychology found there. Each is correlated with a particular development of mentality in the population, or, to speak more technically, with a particular phase of the social mind.

Personal sovereignty, or the power to command obedience,

arises where the collective mental life is little more than instinctive. The submission of many wills to one superior will is not a phenomenon characteristic of highly developed or reasoning intelligence. It is a product of the lowest modes of mental activity. It is found throughout the animal kingdom as among men. It occurs almost unconsciously, as does instinctive action of every kind. The individual who participates in it does not know why he surrenders his own mind to another more powerful. He does it as a dog crouches and fawns. In brief, the power to command obedience is a characteristic product of an ideomotor population.

Class sovereignty, or the power to inspire or to exact obedience, is correlated with a slightly higher grade of mentality, namely, the emotional or sympathetic. It is a product of sympathetic like-mindedness. The superior class, making its appeal to reverence, to sentiment, or to the love of splendor, addresses the feelings rather than the underlying instincts or the overlying intelligence.

Mass action or mass sovereignty also depends upon emotion, but not upon emotion of the merely sympathetic sort. To create mass sovereignty, emotion must be raised to a high pitch and focussed by dogmas, which are made efficient through symbols, partisan cries and fetishistic emblems. A people dogmatically like-minded for a longer or a shorter time becomes more or less fanatical, and its fanaticism, fixed upon definite objects, holds great numbers of individuals in a state that may approach a frenzied intolerance of disobedience.

That most complex phenomenon, a general sovereignty, can exist only in a community of the generally intelligent, who discuss all public questions in a rational way, and who bring about a concert of wills through an exploitation of ideas, rather than through an explosion of feeling or through uncontrolled activity of a merely instinctive sort. General sovereignty is a product of deliberative, that is to say, of rational like-mindedness.

These conceptions of sovereignty enable us to look at the phenomena of government from a new point of view. A sociological classification of governments, in turn, may reinforce our interpretation of sovereignty.

Whatever its mode, sovereignty, as disclosed by sociological analysis, is always supreme power, and not mere right. So far the fundamental concept of modern political science is a true symbol of social fact. Moreover, sovereignty is power to obtain if not always physically to compel obedience. The exercise of supreme power, however, in the actual obtaining of obedience, is not carried far for the mere sake of asserting supremacy. Obedience is desired as a means to some end, and as such it is more or less systematically required, directed and organized. The requisition, direction and organization of obedience is government.

The supreme power itself may govern, or it may delegate governing power and authority. The personal or the class sovereign does not often wholly delegate governing functions. So far as it does delegate, it usually confers authority on a relatively small number of individuals. So, whether immediate or delegated, the government of a personal or of a class sovereign is usually government by a minority of the individuals composing the given political community. The mass or the general sovereign usually does delegate governing authority and power, and usually its delegation is to a numerical majority of the political population. This majority, in turn, usually delegates the actual exercise of the governing power to a limited number of functionaries, who, however, are but the strictly subservient agents of the majority. Whether immediate or delegated, therefore, the government instituted by a mass sovereign or by a general sovereign, is usually majority government.

Besides these distinctions among governments as immediate or delegated, and as minority or majority governments, we have the familiar distribution into absolute and limited governments. In view of what has been said in criticism of the conception of sovereignty as a power to compel obedience, it is unnecessary to argue that no government, except it be instituted by mass sovereignty, can be absolute in the sense that, as power, it is unlimited. Practically all governments are limited in so far as they are modes and manifestations of power. Any government, however, may be absolute in the sense that it is or has unlimited authority. Any sovereign can vest any government that it may

institute with unconditional, unlimited authority, that is, with the right to do anything that it can do. We have seen that absolute government in this sense is substantially the thing that Hobbes had in mind when he discoursed of sovereignty. As a rough distinction, not to be pressed too far, it is scientific to think of sovereignty as supreme power, right or wrong, and of government as the supreme authorized exercise of power.

Adhering to our definitions and reservations, we observe that, when a personal sovereign himself governs or a class sovereign itself exercises governing functions, the government is necessarily absolute, since the sovereign is the source of all conditions and limitations affecting authority. But any sovereign, personal, class, mass or general, may institute a government of delegated powers, and the government may be either absolute or limited, according to the extent of the authority conferred.

If the distinctions thus far made—immediate and delegated, minority and majority, absolute and limited—exhaust the fundamental categories of governmental mode, it is obvious that there may theoretically be eight kinds of government, since there are eight possible combinations of six terms. Practically however, only four of the possible kinds are or have been great social realities, because the distinction between immediate and delegated modes of government is practically of no importance so long as the mode of sovereignty remains the same. Delegated government, we again observe, does not often appear under personal or class sovereignty, and immediate government does not often appear under mass or general sovereignty. Practically, then, as great social realities, the modes of government are these, namely: absolute minority rule, limited minority rule, absolute majority rule and limited majority rule.

Here at length we return to those problems that were the subject of reflection in my preliminary remarks about the relation of popular feeling to speculative theorizing on the subject of government. If there are four well-defined modes of sovereignty, and four well-defined modes of government, we ought to find four well-defined groups of theories or tendencies of speculation on the nature and scope of government. This, as a matter

of fact, is exactly what we do find in the literature of political philosophy, beginning with Hobbes and coming down to the present time. Until Hobbes, not all the possibilities had been intellectually exploited. Furthermore, it is easy to compare these speculations one with another, because, curiously enough, all four kinds or tendencies have been stated in terms of that interesting conception known as the covenant or contract theory of society, and each is represented by a work of enduring distinction, which has exercised great influence over both the thinking and the conduct of mankind.

The contract theory has this peculiar advantage for our present purpose, that it assumes as the starting point of political development a pre-existent general sovereignty; that is to say, it assumes as the beginning of all things political a population in which every man is his own master, and the appearance in that population of a concerted opinion, decision and will. So far the writers of the four great works are in agreement. They begin to disagree when they ask what happens next.

According to Hobbes, whose immortal *Leviathan* is an expanded and popularized edition of his almost forgotten *De corpore politico*, men in a state of nature, before the art of government has yet been invented, find life unendurable. Presumably they talk things over, because they come to an agreement by unanimous consent—an absolutely perfect phenomenon, let us remark, of general sovereignty. They agree that one of their number shall be an absolute ruler over them, and having fixed upon the individual, not by the blind instinctive method whereby the herd selects its leader, but by rational choice, they make over to him all their natural rights. He is to hold them in subjection, lay commands upon them, and create for them positive rights in place of the natural rights surrendered. Since the sovereign thus becomes the sole source of right, there can be no right of even peaceful revolution. The sovereign ruler cannot lawfully be deposed by his subjects. However, if they rebel and succeed in deposing him, their action, in virtue of its success, resolves society back into a state of nature. A new covenant may then be made and a new sovereignty be set up. Hence the practical aphorism, which has lent immense aid and

comfort first and last to both the English and the American mind, that an unsuccessful revolution is a rebellion and a successful rebellion is a revolution.

Throughout this pretty piece of logic Hobbes speaks of the instituted ruler as the sovereign. Considering sovereignty as a right to enforce obedience rather than as a power, Hobbes's mind is intent upon the transfer, by covenant, of the original or natural right of each individual to rule himself, to a sovereign who may thenceforth rule him. In such a transaction as Hobbes describes, there is in fact no transfer whatsoever of sovereignty in the sense of power. Sovereignty remains where it was at first, in the people. They have merely created an absolute minority government, nothing more, and by no possibility could they by deliberative action alienate their sovereignty. By a totally different process, of which Hobbes has no suspicion, they may lose it. Ceasing to be rational and deliberative, becoming impressionable and instinctive, they may unconsciously yield their wills more and more to a ruler of forceful personality. General sovereignty may cease to exist, and personal sovereignty may take its place.

John Locke, writing under political conditions very different from those that shaped the thinking of Hobbes, conceived of the state of nature in a radically different way, and his thinking is straight and clear at a critical point where Hobbes goes wrong. The state of nature, as Locke imagines it and as the *Treatises of Government* picture it, is by no means intolerable; it is only inconvenient. Men therefore are under no necessity to surrender their natural rights. They institute government only to achieve desirable ends which otherwise they could not secure. Therefore they never arrive at any common intention to create a personal sovereign. To their government they delegate limited authority only, establishing usually a limited monarchy. Locke, in a word, sees that in a population of reasoning beings, capable of instituting society by covenant, sovereignty inheres and must forever remain in the people. It cannot by any process of deliberative volition become personal. On another point, however, he falls down where Hobbes walks with assurance. A sovereign people may, if it chooses, create an absolute government, and sometimes it so chooses.

In the *Social Contract* of Rousseau, we have for the first time in political literature a remarkable exposition of the theory of absolute majority government. Along with it we have a definite recognition, such as we find in the pages of Aristotle, that other forms of sovereignty, class and personal, may exist, and have existed, apart from any social contract, and that under any form of sovereignty government may be absolute. The political organization of mankind, Rousseau reminds us, began in force, not in contract. Personal sovereignty and absolute minority rule were not instituted by covenant. The social contract is made, and "association" as distinguished from "aggregation" comes into existence, through a general revolt against minority despotism. The state of oppression under which men have lived has been as intolerable as any state of nature conceived by Hobbes. To escape from it, men are willing to take steps quite as radical as the absolute surrender of natural rights to a personal ruler, which Hobbes imagined. According to Rousseau, men unreservedly surrender their individual wills to the general or collective will. For all practical purposes this collective will is the will of a majority. It is absolute, and every individual must wish that it shall be absolute, because on no other terms is society, as distinguished from minority despotism, possible or conceivable. This doctrine, accepted by the French revolutionists, is accepted also in the United States as the basis of political party discipline, and is put in force by every trade-union organization.

American political philosophy in general, however, has never accepted Rousseau's doctrine of majority absolutism, and American constitutional law has abjured it. To what influence is the American principle traceable, that even the majority may exercise only limited powers of government? I mean, of course, to what is it traceable as a consciously accepted theory. As practice its causes must be found in conditions to be indicated later on. In the evolution of theory we ought to find some noteworthy work standing for limited majority rule in opposition to Rousseau's absolutism, as Locke's *Civil Government* stands for limited minority rule in opposition to the absolutism of Hobbes. Such a book there is, and while in recent years it has not often

been quoted or discussed, it comprehensively reflected American revolutionary thinking, and it exerted a deep and wide influence during the formative period of American constitutionalism. I refer to Thomas Paine's *The Rights of Man*. In substance this work is a vigorous defence of the French "Declaration of the Rights of Man," which, as all students of political history are now aware, was far more a product of American than of French political thought. Specifically, Paine's tract is a masterly arraignment of Burke's *Reflections on the French Revolution*, and in particular of Burke's contention that the people of England "utterly disclaim" the alleged fundamental rights to choose their own governors, to cashier them for misconduct, and to frame a government for themselves. Burke asserted that the English people had disclaimed these rights because Parliament, in a declaration to William and Mary, had said: "The Lords spiritual and temporal and Commons do, in the name of the people aforesaid [meaning the people of England then living] . . . most humbly and faithfully submit themselves, their heirs and posterities forever."

Such a declaration, Paine argues, can have no binding force for succeeding generations. He says:

There never did, there never will, and there never can exist a parliament of any description of men, or any generation of men, in any country, possessed of the right or the power of binding and controlling posterity to the "*end of time*," or of commanding forever how the world shall be governed, or who shall govern it: And therefore all such clauses, acts or declarations, by which the makers of them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void. Every age and generation must be as free to act for itself, *in all cases*, as the ages and generations which preceded it. The vanity and presumption of governing beyond the grave, is the most ridiculous and insolent of all tyrannies. Man has no property in man; neither has any generation a property in the generations which are to follow. The parliament or the people of 1688, or of any other period, had no more right to dispose of the people of the present day, or to bind or to control them *in any shape whatever*, than the parliament or the people of the present day have to dispose of, bind or control those who are to live a hundred or a thou-

sand years hence. Every generation is and must be competent to all the purposes which its occasions require. It is the living, and not the dead, that are to be accommodated. When man ceases to be, his power and his wants cease with him ; and having no longer any participation in the concerns of this world, he has no longer any authority in directing who shall be its governors, or how its government shall be organized, or how administered.¹

It must be admitted that this statement, as it stands, falls short of the assertion that the rightful powers of majorities, as such, are limited. But the principle is clearly implied. If not even the nation itself as a whole may rightfully bind future generations, the absolutism of the majority has no leg to stand on. Moreover, in the last analysis Paine rests his case on the axiom that "the rights of man in society are neither devisable, nor transferable, nor annihilable, but are descendable only."² This is the same axiom that is otherwise expressed in the first two articles of the "Declaration of the Rights of Man," namely :

Men are born and always continue free, and equal in respect to their rights. Civil distinctions, therefore, can be founded only on public utility.

The end of all political association is the preservation of the natural and imprescriptible rights of man ; and these rights are liberty, property, security, and resistance of oppression.

In reaffirming and supporting these declarations, and especially the second, Paine is unquestionably attacking absolutism under every form and disguise. If the end of all political association is the preservation of natural and imprescriptible rights, then neither majorities nor councils nor kings can have unlimited authority. Back of all authority lie powers and rights that cannot be delegated.

This, the doctrine of limited majority rule, has in America its effective legal expression in our constitutional limitations, our system of checks and balances, and especially our two-thirds

¹ The Political Works of Thomas Paine (1826), pp. 8-9. The Writings of Thomas Paine, edited by Conway, vol. ii, pp. 277, 278.

² *Ibid.* p. 107. Conway, ii, p. 365.

and three-fourths rules governing the adoption and amendment of constitutions themselves. All these provisions are assertions and guarantees of rights of minorities and of individuals against majority power. It is the doctrine of the Declaration of Independence, but it found its strongest and best expression in an American document antedating the Declaration almost exactly as long as that document antedated the French "Declaration of the Rights of Man." This was the report on the "Natural Rights of the Colonists," made to the Committee of Correspondence by Samuel Adams, Joseph Warren and Benjamin Church at Faneuil Hall, November 20, 1772. In the first part of the report, on "The Natural Rights of the Colonists as Men," written by Samuel Adams, we read:

All men have a right to remain in a state of nature as long as they please; and in case of intolerable oppression, civil or religious, to leave the society they belong to, and enter into another.

When men enter into society, it is by voluntary consent; and they have a right to demand and insist upon the performance of such conditions and previous limitations as form an equitable *original compact*.

Every natural right not expressly given up, or, from the nature of a social compact, necessarily ceded, remains.

All positive and civil laws should conform, as far as possible, to the law of natural reason and equity.¹

Is it too much to claim that in affirmations and declarations like these, and in the limitations that our constitutions place upon government, we have an unequivocal expression of that doctrine of limited majority government which has found in later years its finished philosophical expression in Herbert Spencer's *Social Statics* and the *Liberty* of John Stuart Mill?

It is not my purpose here to urge that any one of the four great kinds of government is superior to the other three, or that any one is intrinsically more reasonable than another or has a superior warrant in natural justice. I am concerned only to point out certain conditions under which men do as a matter of fact make such assumptions as those which the great political

¹ Wells, *The Life and Public Services of Samuel Adams*, vol. i, p. 502.

theorists have made, and do in fact institute one or another of the forms of government, here described, in approximate accordance with their theoretical assumptions. I hope thus to answer the question, submitted at the beginning of my paper, whether the theories in question are substantially true accounts of great and irresistible forces.

Under what conditions then, if ever, are the assumptions that Hobbes, Locke, Rousseau and the American writers respectively make, substantially true? Through the working of what forces do men institute now absolute and now limited minority rule; now absolute and now limited majority rule?

Hobbes assumes a state of nature that is intolerable, and then he further assumes that because of its intolerableness men will unconditionally alienate their natural rights in exchange for peace and order. Now the only question that need concern us, is this: If at any time Hobbes's primary assumption is substantially true, and whensoever and wheresoever it is true, will not men, though they cannot, as he assumes, wholly surrender their natural wills, waive all question of conditions or limits attaching to the exercise of supreme power and thereby set up absolute minority government? Do not all these conditions prevail, and are not the assumptions of Hobbes for all practical purposes true, whenever, through unorganized rebellion, society is resolved into chaos and a reign of terror? Have not such episodes invariably been followed by the rule of the dictator? Have not the passions, the theories and the interests of men under these circumstances conspired to establish and to maintain absolute minority rule? Has the history of the lesser republics in America, notwithstanding their formal imitation of constitutional precedents established by the United States, been essentially different from that of the Greek and Italian tyrannies, or from the dictatorship of Napoleon?

Locke's fundamental assumption is that the state of nature is not intolerable. Holding with Hooker that men are naturally brethren and inclined to coöperate, he assumes, secondly, that they institute government not from necessity but for utility. Under such circumstances they will not make a bad bargain for themselves. It is inconceivable that they should set up or sub-

mit to any form of absolutism. Whatever government they create and tolerate will be one of limited powers. It will exist by the consent of the governed, and it will be held to responsibility and good behavior. Is it necessary to argue that the whole history of the institution known as "limited monarchy" is an all-sufficient verification of Locke's reasoning? Unlike despotisms, limited monarchies have not sprung out of social chaos. They have come into being as products of an almost imperceptible social evolution, the essential characteristics of which have been a steadily developing mental homogeneity of the people and a growing capacity on their part for spontaneous coöperation, including the practice of self-government.

Minority governments are passing away, and the assumptions that concern us as modern men are those of Rousseau and of the earlier American writers. One or the other of these groups of assumptions carries within it the prophecy of the ultimate democracy. The practical affairs of the vast populations that are destined to dwell within the territorial limits of the federal nations and empires of the future will be conducted under a majority rule that may be a form of absolutism or may be a form of liberalism. Is the ultimate democracy to be a political system wherein the individual must lose his identity through the suppression of the liberties of both individuals and minorities? Or is it to be a political system within which the individual shall be more and more clearly differentiated, and endowed with sacredly-guarded private rights? In a word, are we to have the democracy of solidarity, mechanical, irresistible, ruthless, or, rather, the democracy of individuality, complex, spontaneous, flexible—the democracy of liberty?

The fundamental assumption of Rousseau is perhaps all in all the most interesting one that has been made in political philosophy. It is so strikingly like that of Hobbes, and yet so startlingly different. As Rousseau views them, the relations that Hobbes calls political society did not originate in a covenant, but the relations that Rousseau himself calls society have that origin always. The states of the past have been not societies but "aggregations," hammered together by force and oppression. States become societies, *i. e.*, "associations" rather

than mere "aggregations," when the relations of men to one another, and between themselves and their governments, are created no longer by force, but freely by contract. So far Rousseau is historically sound. Now his assumptions begin. Men create society by compact to escape, not from a state of nature, intolerable or otherwise, but from a historically established oppression, which is quite as intolerable as the state of nature pictured by Hobbes. To escape from it men unconditionally merge their individual wills in a collective will. At this point Rousseau's thinking is identical with that of Hobbes. In a minor point also it is the same. Both Hobbes and Rousseau assume that under the social compact objecting minorities can rightfully claim no consideration. According to Hobbes they remain in a state of nature, which is a state of war, and they must accept the fate of the vanquished. According to Rousseau they prefer to remain under oppression, and they therefore may not complain if they are oppressed by any power strong enough to deprive them of liberty. Rousseau's doctrine in brief is that mankind escapes from a state of oppression into a state of association only by merging the individual will in a collective will, accepting the will of the majority as identical with the collective will, and permitting the majority to rule absolutely.

Whoever soberly reflects upon these assumptions of Rousseau's political philosophy, is bound, I think, to be startled by the examples that will press upon his mind of the practical acceptance of Rousseau's principles in modern democratic society. Not to dwell on such illustrations as our political system affords, in the unit rule in nominating conventions, in the caucus system, in machine and boss domination, let us look for a moment at the situation in that vast non-political organization, the modern industrial system. The modern trade union is perhaps the most perfect exemplification ever seen of absolute majority rule. Whatever the question, it is considered and decided without the slightest regard for individual interests or the slightest recognition of any individual right that happens to conflict with majority interests. So far as the trade unions can control the situation, no individual, not a member of the organization, is permitted to make his living as a wage-earner, and if

he comes into the organization, he enters upon terms of absolute submission to its authority. He can make no individual bargain with his employer; he can work only as many hours as the majority dictates, with only such men as the majority permits, and for only such wages as the majority agrees to.

And what justification or extenuation for all this majority absolutism does organized labor urge? What, indeed, but precisely that fact which Rousseau assumed as the original occasion of the social contract with all its consequences—the fact of oppression. The working man avers that without his organization he would, under the wage-system, be reduced to a practical and helpless slavery. And so completely and intensely does he believe this, that he looks upon a non-union workman as the natural and declared enemy of the whole wage-earning class. If a workman will not join in the social compact, merge his will in the collective will and loyally accept majority rule, he is a “scab,” living and willing to live under oppression, and, as such, a being without moral rights, entitled to no consideration. When in the light of such facts we reflect how far the labor movement is shaping and will henceforth shape all political movements, we shall perhaps realize how far the majority absolutism of Rousseau has already begun to shape our democracy. The record in detail is little short of astonishing. It is hardly too much to say that Mr. Lecky’s history of *Liberty and Democracy* is from one point of view little more than a narrative of the growth in the nineteenth century of majority absolutism.

What then of the assumptions—if any can be discovered—underlying the theory of limited majority rule? And what are the conditions under which we may expect to see a development of that democracy which cherishes individual liberty, believes in minority rights and desires the highest possible differentiation and perfection of individual life? One part of the answer to these questions is immediately obvious. A limited majority rule can never be established or maintained when society is breaking down into a state of “war of every man against every man,” nor, on the other hand, when it is so highly organized on a basis of class distinctions that it is prac-

tically what Rousseau called it, an "aggregation" held together by force and oppression. This observation points to the underlying assumption of writers like Adams and Paine, and other American democratic theorists, and reveals a certain superiority of their insight as compared with the more ambitious philosophizing of Spencer and Mill.

The early American writers assumed that men are born "*free and equal*;" and while they doubtless meant to emphasize the equality that consists in rights, they undoubtedly had in mind also—if not always quite consciously—other kinds of objective equality, such as equality of economic opportunity and an approximate equality of ability. In point of fact such equality is approximately realized under colonial conditions. It was approximately realized in early American life. The land was rich and boundless. Labor was scarce. Any man of force and enterprise could support a family and acquire a moderate fortune. There were no great fortunes; and the state had not yet created artificial personalities of immortal life to dominate the industrial world. The population was made up for the most part of selected stocks, of men and women possessed of sufficient brains, enterprise, courage and idealism to undertake the task of exploiting a new world and creating a new human society. Approximately they were in fact equal and free, as the political writers assumed. As such they did not and could not deliberately institute or desire to maintain any form of absolute power. And there was neither "a natural state" of war, nor any intolerable oppression, other than that of a foreign yoke that might be thrown off, to compel them to establish a government of more than limited powers.

Can we doubt that in these conditions we see the only possible basis of a liberal democracy? Given homogeneity and its concomitant fraternity, given the deliberative mind and with it that general sovereignty which is the supreme expression of intelligent popular power, and given an approximate equality of abilities and of objective conditions, including economic opportunities, must we not have a limited majority rule, observing a due regard for individual rights and liberties, as inevitably as, under oppression, we must have an absolute majority rule?

Can we escape from the conclusion that if the ultimate democracy is to be liberal, cherishing true freedom and perfecting individual life, there must be a great broadening of economic opportunity,—through public ownership, or otherwise—a wholesale destruction of state-created privilege, a wider distribution of power, and a leveling up of educational attainments?

One final reflection may be offered. If the correlation between modes of the social mind and modes of sovereignty is such as has here been indicated, and if the correlation between forms of government and social conditions is substantially that which our conclusions set forth, may we not argue from assumptions to conditions as well as from conditions to assumptions? The question is one not to be answered hastily, for it is fraught with large issues. If it be true that accepted axioms of political philosophy are products of prevailing experience, there would seem to be no escape from the conclusion that, in this present age, a vast amount of actual oppression has still to be met, and must by one or another means be overthrown. For, beyond any doubt, the accepted political philosophy in this great American Republic is today not that of Adams and Paine, but is rather that of Rousseau. It behooves us then in all soberness to ask whether we have not gone over to the theory and practice of absolute majority rule for the very reason that Rousseau himself postulates when he declares that men sink their individual wills in the general will, hoping thereby to meet oppression with invincible power.

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